

PUBLIC HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification of) Docket No.
the Los Esteros Critical Energy) 03-AFC-02
Facility, Phase 2)
(Los Esteros 2))
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 28, 2006

9:06 a.m.

Reported by:
Peter Petty
Contract No. 170-04-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Jackalyne Pfannenstiel, Presiding Member

COMMISSIONERS PRESENT

John Geesman

HEARING OFFICER, ADVISORS PRESENT

Gary Fay, Hearing Officer

Timothy Tutt

STAFF AND CONSULTANTS PRESENT

Robert Worl, Project Manager

Richard Ratliff, Senior Staff Counsel

David Ashuckian

Mark Hesters

R. Peter Mackin
Utility System Efficiencies, Inc.

APPLICANT

Jeffery D. Harris, Attorney
Ellison, Schneider and Harris, LLP
representing Calpine Corporation

Michael Argentine
Robert McCaffrey
Calpine Corporation

Gary Rubenstein
Sierra Research

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P R O C E E D I N G S

9:06 a.m.

PRESIDING MEMBER PFANNENSTIEL: This is a public hearing on the Los Esteros Critical Energy Facility Phase 2. I'm Commissioner Jackie Pfannenstiel; I'm the Presiding Member on the Los Esteros Committee.

To my far right is Commissioner John Geesman, who, because it's anticipated that Commissioner Geesman will join this Committee, he's sitting in on today's hearing.

To my immediate right is Hearing Officer Gary Fay. To my left is Tim Tutt, my Advisor.

This is for purposes of considering additional evidence that relate to the staff motion to possibly override the City to gain LORS compliance, or to override the LORS issue, to be able to finally certify the license for this plant.

So, the hearing today will be conducted by Hearing Officer Fay. Turn that over to Gary.

HEARING OFFICER FAY: Thank you, Commissioner Pfannenstiel. I'd just like to review for the parties the documents, but first I'd like to take appearances. We'll begin with

1 the applicant.

2 MR. HARRIS: Good morning; my name is
3 Jeff Harris. I'm here on behalf of the applicant.
4 To my right is Mike Argentine, who is the
5 development Project Manager.

6 Also with us today is Bob McCaffrey,
7 who's Director of Gas-Fired Operations. And Gary
8 Rubenstein with Sierra Research; our air quality
9 expert. And Shane Conway, a clerk with my office,
10 as well.

11 HEARING OFFICER FAY: Thank you. Mr.
12 Ratliff?

13 MR. RATLIFF: Dick Ratliff, Counsel for
14 the staff. With me today is Bob Worl, the Project
15 Manager. And to my left are three witnesses that
16 the staff would have testify today, Dave
17 Ashuckian, Mark Hesters and a consultant to the
18 staff, Peter Mackin.

19 HEARING OFFICER FAY: Thank you. Is
20 CARE here? Is there a representative from CARE
21 present? How about the City of San Jose? Is
22 there a representative from the City of San Jose
23 present?

24 Okay, I'd just note that the hearing was
25 noticed for 9:00 a.m., and it is now ten minutes

1 after nine. So we'll see if we hear from them
2 later.

3 Just for the record I'd like to review
4 the documents, relevant documents. The staff
5 filed its motion for hearing on May 26th. And on
6 June 9th the Committee issued a Committee order
7 granting staff's motion and noticing today's
8 hearing.

9 In the notice the Committee directed
10 parties to file comments, legal argument and any
11 additional testimony that they sought to introduce
12 on June 22nd.

13 On June 22nd we received testimony from
14 the staff on a number of transmission system
15 related issues, including support, loss analysis
16 and such. And then we received the City of San
17 Jose's response to staff motion at that time. We
18 received an email from Mike Boyd regarding
19 project-related nitrogen deposition. And the
20 applicant's brief in support of the Commission
21 Staff's motion for override was also received.

22 And then this morning we received a
23 message from Mr. Harris that their firm had not
24 been served by the City of San Jose in the matter.
25 And so I'll just begin with that. Mr. Harris, did

1 you want to comment on that?

2 MR. HARRIS: Yes, thank you, Mr. Fay. I
3 appreciate the opportunity. We did not receive
4 the brief in our office, you're correct. Mr.
5 Argentine did receive it in the mail, but our
6 lawfirm, Mr. Wheatland in particular, is on the
7 official service list. And if it helps, I do have
8 copies from the website of the Commission's
9 service list. I have a copy of the San Jose proof
10 which omits our lawfirm. And then there's an
11 electronic copy that was served by dockets, as
12 well. I have those documents. But they're
13 generally available to you, as you know already.

14 I had a chance to briefly look at San
15 Jose's brief -- briefly, brief -- this morning.
16 And I guess I would say one thing, and then make
17 one request.

18 The one thing I would say is that I'm
19 not particularly concerned about any of the
20 arguments in there. The state of the law is the
21 state of the law. And San Jose doesn't have the
22 ability -- the Legislature changed that law, so
23 I'm not particularly concerned, at the highest
24 level. So that's what I'd like to say.

25 And then in terms of relief, I would

1 like to ask for the Committee to consider granting
2 the applicant, and the applicant alone, the
3 opportunity to review that brief; and the rights,
4 but not the obligation, to file a response.

5 I think that ought to be limited to the
6 applicant on those legal issues. And I'm not even
7 sure we'll avail ourselves to that relief, but
8 that would be my request.

9 HEARING OFFICER FAY: How much time are
10 you requesting?

11 MR. HARRIS: I would say a week from --
12 let me think -- I'm trying to remember, with the
13 holiday.

14 UNIDENTIFIED SPEAKER: It's the 4th of
15 July.

16 MR. HARRIS: Yeah.

17 (Laughter.)

18 MR. HARRIS: Which day of the week --

19 HEARING OFFICER FAY: Thank you. We'll
20 take official notice of that.

21 MR. HARRIS: Corrected once again. How
22 about next Friday would be like five working days,
23 is that right, plus or minus? Anybody --

24 HEARING OFFICER FAY: I believe so, if
25 that's --

1 MR. HARRIS: Yeah, let's take next
2 Friday at the latest; and we will --

3 HEARING OFFICER FAY: Okay, so that
4 would be July 7th.

5 MR. HARRIS: Commissioner Geesman?
6 Okay.

7 HEARING OFFICER FAY: Okay, we'll -- all
8 right, the Committee concurs with that remedy, so
9 the applicant, alone, will have a right to respond
10 in writing to San Jose's response to the staff
11 motion. And applicant will file its response, if
12 it has one, by July 7th. And that is direction
13 only to the applicant. Other parties will not
14 have that opportunity, since they were served by
15 the City of San Jose.

16 Okay. Yes, Mr. Worl.

17 MR. WORL: I just wanted to say the City
18 is not here to speak, but I did want to say that
19 the proof of service list that they used was one
20 that was on the website. And if there was any
21 error, it may be either with the mails or with
22 that --

23 HEARING OFFICER FAY: Well, the proof of
24 service list they used and sent back to us does
25 not match the proof of service list the staff

1 used. And staff's proof of service list includes
2 the attorneys for the applicant, as have all the
3 proof of service lists in this case, to my
4 knowledge.

5 So, this is an interesting omission.

6 Mr. Harris.

7 MR. HARRIS: Yeah, I would just like to
8 say that the current list on the Commission's
9 website, which again I have a copy if you'd like,
10 is revised on 4/25. And so from 4/25 forward
11 certainly we're on that list, at least from that
12 date.

13 HEARING OFFICER FAY: Okay.

14 MR. WORL: I just wanted to clarify
15 where they had gotten the proof of service list
16 because they did call me, and that was the only
17 list we had available.

18 HEARING OFFICER FAY: Since you brought
19 this up, we'd direct staff to check that proof of
20 service listed on the web, and insure that the
21 attorneys for the applicant have not been deleted.

22 MR. WORL: I don't believe that they
23 were.

24 HEARING OFFICER FAY: Please check that.

25 MR. WORL: But I will double-check it.

1 HEARING OFFICER FAY: All right.
2 Without further delay we'd like to begin first
3 with taking additional evidence. The parties were
4 offered an opportunity to provide any additional
5 evidence they thought was relevant to the question
6 of override.

7 Staff filed, as I mentioned, in regards
8 to local system effects; and Intervenor CARE filed
9 regarding nitrogen deposition. CARE seems to have
10 no representative here, but let's go ahead with
11 the staff testimony.

12 MR. RATLIFF: Yes, Commissioners. When
13 we presented our testimony in this case a year
14 ago, staff had actually not tried to put together
15 a case that would support an override. This was
16 because we were under the impression that that
17 would not be necessary. The City had consistently
18 told us that they were going to amend their zoning
19 ordinance such that it would be consistent with
20 the project. And they had told us that they would
21 use the staff FSA to do that.

22 And we had proceeded on that basis
23 without really trying to focus on project benefits
24 that would support an override.

25 A year ago today I think you will

1 remember, actually it's a year ago and two days,
2 it was June 30th of last year, the City confirmed
3 that, and actually assured this Committee that by
4 August they would have conformed their ordinance.
5 Of course, they did not do so.

6 And now staff is moving for override
7 because we have -- are essentially in a position
8 where there is complete paralysis under the City's
9 interpretation of CEQA. And we therefore want to
10 put on additional evidence, realizing that it's
11 entirely possible that implicitly from the
12 existing record there is sufficient evidence to
13 support an override.

14 Nevertheless, we want to put on the
15 witnesses who would support the local system
16 effects benefits that the project represents,
17 would confirm.

18 And for that today we have three
19 witnesses, two from the staff, one a consultant.
20 Those are Mark Hesters and Dave Ashuckian of the
21 staff; and Peter Mackin, who is a consultant to
22 the staff.

23 And I would like to have them, with your
24 permission, testify as a panel. I think it will
25 be more efficient. And they will need to be

1 sworn. And then I would like to basically go
2 through the preliminary questions with all three
3 of them, and have them summarize their testimony
4 individually.

5 HEARING OFFICER FAY: Okay. Will the
6 court reporter please swear the panel.
7 Whereupon,

8 MARK HESTERS, DAVID ASHUCKIAN and PETER MACKIN
9 were called as witnesses herein, and after first
10 having been duly sworn, were examined and
11 testified as follows:

12 THE REPORTER: Would you please state
13 and spell your full names.

14 MR. ASHUCKIAN: Dave Ashuckian,
15 A-s-h-u-c-k-i-a-n.

16 MR. HESTERS: Mark Hesters, M-a-r-k
17 H-e-s-t-e-r-s.

18 MR. MACKIN: Peter Mackin, P-e-t-e-r
19 M-a-c-k-i-n.

20 DIRECT EXAMINATION

21 BY MR. RATLIFF:

22 Q Starting with Mr. Ashuckian for the
23 moment, Mr. Ashuckian, did you prepare the
24 testimony -- or did you contribute to the
25 preparation of the testimony titled, electricity

1 benefits and loss analysis resulting from
2 conversion of the Los Esteros Critical Energy
3 Facility to a combined cycle plant?

4 MR. ASHUCKIAN: I did.

5 MR. RATLIFF: And is that testimony true
6 and correct to the best of your knowledge and
7 belief?

8 MR. ASHUCKIAN: Yes.

9 MR. RATLIFF: Do you have any changes to
10 make in it at this time?

11 MR. ASHUCKIAN: No.

12 MR. RATLIFF: Mr. Hesters, did you
13 likewise contribute to that testimony?

14 MR. HESTERS: I did.

15 MR. RATLIFF: And is that testimony true
16 and correct to the best of your knowledge?

17 MR. HESTERS: Yes, it is.

18 MR. RATLIFF: Do you have any changes to
19 make at this time?

20 MR. HESTERS: No.

21 MR. RATLIFF: Mr. Mackin, you provided a
22 separate piece of testimony. It is titled,
23 electricity supply benefits and local system
24 effects created by the conversion of the Los
25 Esteros Critical Energy Facility to a combined

1 cycle plant, is that correct?

2 MR. MACKIN: Yes.

3 MR. RATLIFF: And is that testimony true
4 and correct to the best of your knowledge and
5 belief?

6 MR. MACKIN: Yes, it is.

7 MR. RATLIFF: Do you have any changes to
8 make in it at this time?

9 MR. MACKIN: I noticed a typographical
10 error when I mailed it in to you, but I can't
11 recall exactly where it is. That would be the
12 only change.

13 MR. RATLIFF: Okay. We won't worry
14 about the typographical errors.

15 I would like to start with Mr. Hesters,
16 and ask Mr. Hesters to summarize his testimony,
17 first starting with what his contribution to the
18 testimony was, and what his conclusions were.

19 MR. HESTERS: My contribution is the
20 loss analysis of the electric supply benefits and
21 loss analysis resulting from conversion of Los
22 Esteros Critical Energy Facility to combined cycle
23 plant portion of the testimony.

24 The loss analysis is essentially when
25 you locate a power plant in a load center such as

1 San Jose, like you are doing with Los Esteros, you
2 reduce the line losses that are caused when you're
3 serving load from essentially remote generation.

4 So we did an analysis of the reduction
5 and line losses that would occur if the 140
6 megawatts of the conversion plant was added to --
7 or built or operating in San Jose.

8 We essentially did five scenarios
9 because where you assume the Los Esteros
10 generation -- the generation that you assume, the
11 Los Esteros generation, is displacing, makes a big
12 difference in the losses that you see.

13 The scenarios included a local -- a
14 couple of local scenarios, one looking at Los
15 Medanos, a nearby plant. Also the Moss Landing
16 plant. Both of those were local generation
17 changes. We also looked at a change if the Los
18 Esteros plant was supplanting imports from the
19 northwest.

20 The results of the study showed a range
21 of loss differences between 6 and 20 megawatts.
22 We applied some factors to those and came up with
23 an expected loss savings of about 9 megawatts.

24 We then applied a system load factor to
25 that, and that 9 megawatts of loss savings comes

1 out to about 27 gigawatt hours per year in
2 generation savings. And this is generation that
3 if this plant isn't operating has to be done
4 somewhere else. That generation comes with a
5 emissions and other water impacts that if you are
6 operating Los Esteros you don't see at all.

7 The value of these savings we calculated
8 at about between \$1.7 and \$2.7 million per year.
9 Over 20 years that comes to about \$17 to \$24
10 million.

11 MR. RATLIFF: Does that conclude your
12 summary?

13 MR. HESTERS: That concludes my summary.

14 MR. RATLIFF: Thank you. Mr. Mackin,
15 could you summarize your testimony briefly, as
16 well? And could you start by very briefly going
17 over your experience and credentials and your
18 participation in former Commission cases.

19 MR. MACKIN: Yes, I can. My name's
20 Peter Mackin, and I -- I guess, I worked for PG&E
21 for about 15 years; at the ISO for five. And
22 during that time when I was at the ISO I provided
23 expert witness testimony in system reliability and
24 transmission system engineering for the Metcalf
25 Energy Center, the Los Medanos Energy Center,

1 which at the time was called Pittsburg District
2 Energy Facility, the Delta Energy Center, the Moss
3 Landing Power Plant Expansion, and the El Segundo
4 Expansion. And I'm not sure on that one; I
5 prepared that testimony, but when it actually was
6 filed I'm not sure if my name was still on it,
7 because I left the ISO just about the time that
8 that testimony was filed.

9 And then after the ISO I worked for five
10 years at Navigant Consulting and I'm currently at
11 the Utility System Efficiencies as a Vice
12 President of Reliability Services and Principal
13 Electrical Power System Analyst.

14 MR. RATLIFF: Did you mention your
15 participation in the Metcalf proceeding?

16 MR. MACKIN: I did. I prepared, also
17 prepared, or helped prepare in that proceeding the
18 local system effects testimony.

19 MR. RATLIFF: Thank you. Could you go
20 forward with a brief summary, then?

21 MR. MACKIN: Sure. Okay. So, what I
22 did is I reviewed the ISO letter that was
23 submitted; I believe it was submitted in this
24 proceeding, correct?

25 MR. RATLIFF: Yes.

1 MR. MACKIN: Okay. I reviewed that
2 letter and basically I agree with their
3 conclusions except for the conclusion where they
4 state that they believe there may be some
5 detrimental effects to moving the interconnection
6 point of the power plant from the 115 kV system to
7 the 230 kV system.

8 I reviewed the ISO's local capacity
9 requirements analysis for 2007. And the system
10 impact study and facility study for the Los
11 Esteros Critical Energy Facility expansion. And
12 both of those documents, my interpretation of
13 those documents is that they support actually an
14 improvement in system performance rather than a
15 reduction in system performance.

16 And also I reviewed draft testimony of
17 staff regarding the loss analysis. And it appears
18 that that analysis is consistent with the
19 methodology that I used in the local system
20 effects testimony for Metcalf. And I agree with
21 their conclusions regarding loss savings.

22 I believe that's essentially it.

23 MR. RATLIFF: Okay, Mr. Mackin, you
24 testified that you were the witness in the Metcalf
25 case. Could you perhaps briefly tell us how

1 things changed and how things are the same with
2 regards to -- well, first of all, let me ask you
3 to say what your conclusions were in that case
4 when you studied this issue. And then could you
5 tell us how things have changed since then?

6 MR. MACKIN: Well, in the Metcalf
7 analysis we determined that there were substantial
8 loss savings due to the location of the Metcalf
9 Energy Center in south San Jose. We also
10 determined that there were some potential system
11 benefits due to deferral of capital projects. And
12 some -- let's see, what else did we have -- there
13 were about four different items. Yeah, there was
14 an improvement in reactive margin.

15 Actually, if I could just refer to my
16 notes. Okay, yeah, there was a deferral, as I
17 mentioned, deferral of capital projects;
18 improvement in reactive margin because of the
19 reactive power source and also the real power
20 providing near the load center.

21 And also we determined that there would
22 be a potential for a reduced RMR costs due to the
23 fact that the plant was located in an RMR area,
24 and that it would likely be less expensive to
25 operate; and if it were under an RMR contract it

1 would cost less than the existing facilities in
2 the Bay Area.

3 MR. RATLIFF: Do you recall if during
4 the testimony in Metcalf whether you testified
5 that, in terms of its location electrically, the
6 Los Esteros site is actually even superior to that
7 of Metcalf for providing benefits?

8 MR. MACKIN: Yeah, I believe in one
9 part, I don't know if it was that testimony, but
10 in one of the analyses that we performed for that
11 project, we looked at different locations for
12 power plants to determine which location might
13 have the greatest benefits.

14 I believe it was maybe in the
15 alternative section. And in that analysis we
16 actually determined that the Newark or Los Esteros
17 area of San Jose was actually superior to Metcalf
18 in reducing losses and providing other benefits to
19 the system. Although the difference was not
20 great, it was enough of a difference to be
21 mentionable.

22 MR. RATLIFF: At the risk of having you
23 restate something you've already stated, can you
24 tell us about the LCR study and what it actually
25 shows?

1 MR. MACKIN: Okay. The local system,
2 local capacity requirement study is sort of the --
3 it's the analysis that supersedes RMR. And I
4 believe it's going to take the place, once the ISO
5 puts into place MRTU, which is one of the
6 something technology and update -- yeah, it's --
7 who knows. We always call it Mr. Tu, so I can't
8 tell you what it actually stands for.

9 Anyway, the LCR analysis --

10 COMMISSIONER GEESMAN: Market redesign
11 and technology update.

12 MR. MACKIN: Technology update. Thank
13 you.

14 COMMISSIONER GEESMAN: I'm looking
15 forward to joining this Committee because of the
16 value that I seem to bring to the record.

17 (Laughter.)

18 MR. MACKIN: Well, the problem is
19 there's too many acronyms, and even when you live
20 with them you forget what they mean.

21 Anyway, in this LCR analysis the ISO
22 looked at different areas of the system and
23 determined what the capacity requirements would be
24 in each area and subarea of the system,
25 essentially using a methodology very similar to

1 what they did for RMR.

2 The criteria was different. I don't
3 know the exact details of all the differences, but
4 I believe LCR is a little more stringent, so the
5 LCR requirements might be a little higher than
6 what you'd see under RMR.

7 Anyway, for the San Jose area what the
8 ISO determined was that the critical contingency
9 for San Jose was the loss of two 115 kV lines, the
10 Evergreen Markham to San Jose B line; and the
11 Metcalf to IBM Harry Road to El Patio 115 line.
12 And when both of those lines are out, there's only
13 three remaining lines, and only one that's really
14 significant to provide load service to San Jose
15 from the south. And so that line tends to
16 overload under conditions where there's not a lot
17 of local generation in San Jose.

18 And the Los Esteros Critical Energy
19 Facility, due to its location in northern San
20 Jose, provides additional energy to serve load
21 that reduces the loading on the line from the
22 south, and provides benefits to the system. It
23 doesn't reduce the LCR requirement, but it enables
24 the San Jose area to be served more reliably due
25 to its presence.

1 MR. RATLIFF: Is that, in effect, what
2 you mean when you say operational benefits --

3 MR. MACKIN: Yes, --

4 MR. RATLIFF: -- elsewhere in your
5 testimony?

6 MR. MACKIN: Right. And when I discuss
7 operational benefits -- well, actually I don't
8 really discuss them in that much detail, but in
9 the operational benefits what we're looking at is,
10 you know, normally a planning analysis will look
11 at the peak and determine whether or not you can
12 serve a peak load under conditions of having all
13 facilities in service, and then certain facilities
14 out of service.

15 Well, the system has to operate 365 days
16 a year, 24 hours a day. and so under those
17 conditions, load may not be at peak, but other
18 facilities are out of service because you have to
19 maintain them. And so under conditions where load
20 may not be at maximum, but certain lines may be
21 out of service, like for example one of the lines
22 I mentioned earlier, then the ISO has to be able
23 to operate the system under the possibility of
24 having additional lines go out of service.

25 And so in those situations, having

1 additional local generation provides operational
2 flexibility by increasing the window under which
3 maintenance can be done on facilities. And that
4 provides a great benefit to the ISO.

5 MR. RATLIFF: Does that conclude your
6 summary of your testimony?

7 MR. MACKIN: Yes, it does.

8 MR. RATLIFF: Are there any further
9 things that you would like to add to it on this
10 issue?

11 MR. MACKIN: There is one other thing I
12 forgot. There was an additional benefit that I
13 determined from reviewing the system impact study
14 that PG&E performed. And that was that due to the
15 increase in generation at LECEF, line loadings
16 under contingencies throughout the San Jose area
17 went down. I don't believe there were any that
18 actually went up.

19 Because that study showed reduced
20 loadings on the 115 kV, what that says to me is
21 the addition of LECEF, the expansion, would
22 provide additional load serving capability to the
23 San Jose area.

24 Without LECEF, as the load grows, PG&E
25 would have to add additional facilities,

1 transmission or perhaps generation, to serve the
2 load.

3 With LECEF in service, the expansion,
4 those projects would be, at a minimum, deferred;
5 in some cases maybe not necessary.

6 And also fault duties were reduced
7 because the plant was being removed from the 115
8 system to the 230 system; fault duties on the 115
9 kV system declined, which is a benefit to the
10 system. Obviously because the plant was moved to
11 the 230 system, the local 230 kV breakers, the
12 fault duty, did increase. But it was well within
13 the capability of the breakers, so there was no
14 adverse impact to the system from the addition of
15 the expansion.

16 MR. RATLIFF: Thank you, Mr. Mackin.
17 Finally, we have Mr. Ashuckian from the staff, who
18 is, I think, more of a big-picture guy in some
19 measure. And I would like him to very briefly
20 summarize his testimony, as well.

21 MR. ASHUCKIAN: Thank you. I
22 contributed to the discussion about, again, the
23 benefits similar to Peter regarding the local area
24 capacity requirements, as well as the future
25 benefits, as load grows.

1 The Los Esteros plant is located in the
2 RMR location, as Peter noted. In addition to
3 that, northern California currently has a fairly
4 significant amount of generation, but there is
5 over 1000 megawatts currently at potential for
6 retiring, as well as another 1500, for a total of
7 2600 megawatts that are on our list of aging
8 plants that don't currently have contracts, that
9 may retire in the future.

10 Both our analysis and PG&E's resource
11 adequacy analysis indicates that they will need to
12 acquire additional resources in the coming years,
13 possibly again, beginning as early as 2008 if some
14 of these aging plants retire.

15 So, this plant will provide benefits to
16 helping ease that potential burden if those plants
17 do retire. And in addition to that, they offer
18 alternatives to those plants that may facilitate
19 their retirement, as well.

20 MR. RATLIFF: Does that conclude your
21 summary? Oh, I'm sorry.

22 MR. ASHUCKIAN: Yeah, that's really it.
23 Again, I concur with what Peter has said about the
24 value of the plant because of its local capacity
25 requirement areas. It is about 40 percent of the

1 capacity in that local capacity requirement area.
2 So it's a pretty significant player.

3 MR. RATLIFF: Thank you. Commissioners,
4 that is our presentation. And the witnesses are
5 available for cross-examination or questions from
6 the Committee.

7 Oh, and I should also mention, I think,
8 that the ISO did provide a letter to the docket.
9 It was supportive of the benefits of the project.
10 Unfortunately, the personnel at the ISO who were
11 responsible for the letter were unable to attend
12 due to vacations and also I think the departure of
13 one of those personnel to another job. And so
14 there was no one who could really speak with
15 authority on the contents of the letter for this
16 date.

17 HEARING OFFICER FAY: Okay, thank you.
18 Let's first see if the applicant has any
19 questions. Any cross, Mr. Harris?

20 MR. HARRIS: No questions, thank you.

21 HEARING OFFICER FAY: Okay. I would
22 just like to go over this in just a slightly
23 different way, because of the requirements of the
24 statute.

25 In making an override finding the

1 Commission's required to look at at least three
2 particular areas, environmental benefits of the
3 project; consumer benefits; and local system
4 reliability.

5 And I believe your testimony has covered
6 that, but if you could just -- if the appropriate
7 member of the panel could just capsulize each area
8 in brief summary, I think it would help the
9 record.

10 First, environmental impacts of going
11 ahead with the project versus the no-project
12 alternative, from your perspective.

13 MR. RATLIFF: Well, I think --

14 MR. ASHUCKIAN: Well, I think one
15 argument that could be made is the fact that this
16 is going to be a new plant that complies with all
17 new current air quality standards. And, again, it
18 is likely, if it's operational, to replace aging
19 plants that are not necessarily permitted to the
20 same standards.

21 So, there is some benefits there, as
22 this operates and displaces existing facilities.

23 MR. HESTERS: I can speak a little bit
24 to the environmental benefits and consumer
25 benefits of the loss savings.

1 The loss savings, if you don't receive
2 the loss savings, the line losses have to be
3 generated somewhere. And in this case we're
4 estimating 9 megawatts and 26, about 27 gigawatt
5 hours a year.

6 If this project's built that's 27
7 gigawatt hours that doesn't have to be generated
8 anywhere. It's 27 gigawatt hours of emissions and
9 other environmental impacts that don't appear on
10 the system.

11 It also would, again if you have to
12 generate for those losses, it's going to cost the
13 system \$1.7 to \$2.4 million per year. That's a
14 consumer benefit that should show up. I don't
15 know exactly how it will translate through the
16 market, but that is a basic generation efficiency
17 savings.

18 HEARING OFFICER FAY: And would you
19 consider that a consumer savings? A consumer
20 benefit?

21 MR. ASHUCKIAN: That's what I was
22 saying. It should, in the long run, translate
23 through the market, but it may not happen right
24 away.

25 MR. MACKIN: Yeah, well, I guess I could

1 address that issue from the perspective of the
2 current market. I believe, under the current
3 market structure of the ISO, generators pay for
4 system losses. And so therefore this loss savings
5 that we've determined would -- the monetary
6 benefits would actually flow back to the
7 generators.

8 If they were to bid in a market the same
9 way they're bidding now, it would just increase
10 their profits. However, you would expect that if
11 it's a competitive market that they would then
12 seek to lower their bid prices in order to remain
13 competitive, because the other generators could
14 also lower bid, you know, and beat them out. So,
15 therefore the cost savings would then, in a round-
16 about way, flow back to the ratepayers.

17 HEARING OFFICER FAY: Okay, and what
18 about system reliability? Just to capsulize that.

19 MR. MACKIN: Okay, from a system
20 reliability perspective, you know, as I mentioned
21 earlier I did review the facility study and system
22 impact study that PG&E performed for this project.

23 And it noted that in almost all cases
24 the line loadings and breaker duties were reduced
25 due to the addition of the project. Therefore,

1 you know, in both cases the system does fully meet
2 applicable reliability criteria.

3 However, under the scenario where the
4 LECEF expansion is in service, because line
5 loadings are reduced under severe contingencies
6 that might be beyond the reliability criteria, or
7 scenarios that aren't looked at normally, because
8 line loadings are reduced, you would have the
9 likelihood that the reliability of the system
10 would be improved.

11 Because under the severe contingencies,
12 if line loadings were lower after the project,
13 after severe contingencies, they would also be
14 lower. And that would improve the reliability of
15 the system, reduce potential load shedding under
16 severe contingencies and things of that nature.

17 HEARING OFFICER FAY: Great. Thank you.
18 All right, anything further, Mr. Ratliff?

19 MR. RATLIFF: No.

20 HEARING OFFICER FAY: In terms of your
21 witnesses.

22 MR. RATLIFF: No.

23 HEARING OFFICER FAY: Okay. Well, I
24 want to thank the panel; that was very helpful.
25 And helps us to bring the record up to date.

1 I'd now like to ask, starting with the
2 applicant, if you have anything to argue in
3 addition to your written filing, or if you wish to
4 respond to any of the other parties, acknowledging
5 that you will have the opportunity to respond in
6 writing to the San Jose's filing?

7 MR. HARRIS: Just maybe a couple things,
8 Mr. Fay.

9 First, I guess, at the highest level,
10 it's time to act on this application. There's
11 been a lot of process here, and I would
12 characterize that as, you know, extra-legal, super
13 process. The Commission is fabulous on due
14 process. And in this case you've gone above and
15 beyond, especially at the staff level. So I want
16 to compliment on the staff on their activities to
17 try to bring this thing forward.

18 But at the end of the day, it is time to
19 act on this application. We've got to move
20 forward. We think that the staff brief does a
21 very good job of making the argument that this
22 entitlement, quote-unquote, is completely
23 preempted by the Energy Commission's authority.
24 The moniker, itself, is a permit. And we think
25 the Commission's permitting authority preempts

1 this permit. And we would ask that you make that
2 finding of preemption.

3 In addition, out of an abundance of
4 caution, we would also recommend that you make the
5 finding necessary for the override. So, you know,
6 belt-and-suspender approach, to use a
7 colloquialism there. I think that's probably the
8 most prudent course. And it does allow us to
9 bring this process to closure. So that would be
10 where we'd like to see this process end up.

11 So, thank you.

12 HEARING OFFICER FAY: I'm sorry, I was
13 taking notes and you said belt-and-suspender.
14 What are the two parts in addition to the staff's
15 motion you also recommend?

16 MR. HARRIS: No, I just think, at the
17 end of the day, the finding ought to be both a
18 finding of preemption, number one. So no need for
19 an override. And then maybe that's the belt, I
20 don't know.

21 And then out of an abundance of caution,
22 to make the override findings, as well. So that
23 if there's ever a challenge on the question of
24 preemption you could rest on either means. I
25 think you ought to make both findings.

1 And the Commission has done that in the
2 past, I think, in a couple of cases. And I do
3 think that the Commission's interest in the legal
4 defensibility of the decision is well served by
5 making both findings.

6 HEARING OFFICER FAY: Are you
7 recommending at all that there be an environmental
8 override finding?

9 MR. HARRIS: I do not believe there's
10 any significant environmental impacts that require
11 an override. So, we don't need to add another
12 pair of suspenders. I think we're fine.

13 HEARING OFFICER FAY: All right. Mr.
14 Ratliff, anything further? And I'd like your
15 thoughts on what Mr. Harris has just said, because
16 as I recall, staff did not recommend the
17 preemption approach.

18 MR. RATLIFF: Well, staff looked closely
19 at the preemption issue. We think it's arguable
20 that the Energy Commission permit would
21 essentially serve in place of the PD permit that
22 the City issues.

23 But because the issue is arguable we
24 would not recommend that you rely solely on saying
25 that our permit preempts theirs. Rather, we think

1 that you should make the override.

2 That partly has to do with the way the
3 San Jose ordinance actually works. And it works,
4 in essence, to the effect that if a use is not
5 consistent, or if the PD permit is not in
6 existence, the underlying base zoning category
7 applies. And in this case it would be
8 agricultural.

9 I think the City would probably make
10 that argument, although they have not done so yet.
11 If that were the case, if it were agricultural,
12 the base zoning would not be consistent with the
13 power plant use.

14 And really we don't want to have to face
15 the possibility of having to argue about that if
16 we can avoid it. And we think that there are very
17 strong grounds for an override to avoid ever
18 having to wrestle with that argument.

19 HEARING OFFICER FAY: Okay. Thank you.
20 Anything further?

21 MR. RATLIFF: No. Mr. Fay, I guess we
22 had expected that the City might show up to talk
23 about the issues they raise in their brief.
24 Certainly it's not very sporting to speak badly
25 about the City when they aren't even here. And I

1 don't really want to do so.

2 But, the City's suggestion that they
3 would correct the factual record is sort of lost
4 on the staff, because we believe that the facts
5 that we recite in our motion are a fairly
6 restrained and accurate depiction of what has
7 actually happened. More things could be said that
8 were not said. And the things that are actually
9 not documented are within the personal knowledge
10 of people in this room. So, we aren't quite sure
11 what they mean by that.

12 Secondly, the City, for the first
13 time, offered a suggested -- the City goes to some
14 length to say that there is no actual impasse
15 here, and that they would still be quite willing
16 to conform the ordinance, and offered for the
17 first time another suggested solution for doing
18 so.

19 That suggested solution would be that
20 the Energy Commission would, in some manner,
21 certify the FSA or the PMPD as the environmental
22 document. And then they could use it. Like I
23 say, we have never heard that suggestion in all of
24 our discussions in the past before they filed
25 their brief.

1 Let me also point out that the brief, on
2 page 4, 5 of the brief, they go to great length to
3 say that they cannot use the staff FSA or the PMPD
4 because under the CEQA guidelines the Energy
5 Commission would have to take the final approval
6 first before they could rely on that document.

7 And that would be entirely inconsistent
8 with this new theory that they've thrown out in
9 their brief. So they're being, again,
10 inconsistent with how they are suggesting they
11 either can or can't proceed.

12 This has been, I think, the kind of
13 shifting inconsistent explanation that we've
14 gotten from the City all along. The sum result of
15 which is that there is complete paralysis. The
16 City cannot act to change its ordinance; and the
17 Energy Commission cannot make findings of
18 conformity.

19 This is based on the City's
20 interpretation of the CEQA guidelines, which we
21 believe, and which the Chief Counsel for this
22 agency, has told the City in the past is an
23 incorrect reading of the CEQA guidelines. But
24 they persist in this interpretation. And we think
25 it makes it really impossible for anyone to act

1 unless the Commission does commit itself to an
2 override.

3 And it is for that reason that we are
4 here today.

5 HEARING OFFICER FAY: Well, thank you
6 for that summary. And I'll note that this
7 Committee, in its evidentiary hearing on June 30th
8 of 2005, had Mr. Buikema of the City of San Jose
9 Planning Department, on the phone. And he
10 indicated at that time that he thought by mid-
11 August the City Council would have approved the
12 zoning. And also stated that he didn't anticipate
13 any problem with it. And, in fact, said he
14 thought it would go smoothly.

15 So, there's obviously been a lot of
16 shifting in position since that time. And from
17 what I know of the staff's efforts on this -- I
18 want to commend staff for its patience and
19 continuing efforts in trying to resolve this
20 before filing its motion to override.

21 CHAIRPERSON PFANNENSTIEL: I guess I
22 would just observe that this agency does not use
23 its override authority frequently. I read that we
24 have only used it fewer than half a dozen times in
25 the existence of the Energy Commission.

1 And I think for good reason. I think
2 that to the extent we possibly can, we work with
3 and respect the local authorities. And I think in
4 this case we've tried very hard to do that.

5 So we find ourselves at a point where
6 this is a case that has dragged on longer than it
7 needed to, as we've tried to resolve the issues.

8 And, you know, we're here now, and I
9 think it's a significant decision that the
10 Committee is being asked to make. And we will
11 look at both the argument and the evidence, and
12 with any additional argument that may come in, I
13 guess from the applicant counsel after they've had
14 a chance to look at the brief. And then render
15 the decision.

16 Thank you, Hearing Officer Fay.

17 HEARING OFFICER FAY: Okay. Any closing
18 remarks? Anything further?

19 All right. This closes the evidentiary
20 record in the Los Esteros Phase 2 proceeding. And
21 we are adjourned.

22 (Whereupon, at 9:52 a.m., the public
23 hearing was adjourned.)

24 --o0o--

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of July, 2006.

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